

1 Richard L. Bolton
BOARDMAN, SUHR, CURRY & FIELD, LLP
2 1 S. Pinckney Street
4th Floor
3 Madison, Wisconsin 53703
WI State Bar No: 1012552
4 Phone: (608) 257-9521
Fax: (608) 283-1709
5 rbolton@boardmanlawfirm.com

6 Robert A. Seeman
Attorney at Law
7 658 Myrtle Street
Glendale, CA 91203
8 State Bar No: 52790
Phone: 818-384-8059
9 Fax: 818-241-6907
rseeman@pacbell.net

10 Attorneys for Plaintiff,
11 FREEDOM FROM RELIGION
FOUNDATION, INC.

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **EASTERN DIVISION**

16 **FREEDOM FROM RELIGION**
FOUNDATION, INC.,

CASE NO.: CV08-07833 PA (PJWx)

17 **Plaintiff,**

**PLAINTIFF'S STATEMENT OF
GENUINE ISSUES IN OPPOSITION
TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

18 v.

19 **CITY OF RANCHO CUCAMONGA,**
20 **CALIFORNIA, and LINDA**
21 **DANIELS, Rancho Cucamonga**
Development Director,

Hearing
Date: September 14, 2009
Time: 1:30 p.m.
Dept.: 15
Judge: Hon. Percy Anderson

22 **Defendants.**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. Pursuant to Local Rule 7-9, Plaintiff submits its opposition to Defendants' statement of alleged uncontroverted facts.

DEFENDANTS' ALLEGED UNDISPUTED MATERIAL FACT

1. The City of Rancho Cucamonga has a custom and policy of letting businesses know about citizen complaints related to the business.

SUPPORTING EVIDENCE

1. Deposition of Linda Daniels, pp. 28:7-11, 51:2-24; 95:12-21 (true and correct copies of these pages are attached collectively to the Motion as Exhibit C); Deposition of Donna Vega, pp. 15:21 through 16:4, 19:13-21, 81:20-23. (True and correct copies of these pages are attached collectively to the Motion as Exhibit D.)

PLAINTIFF'S RESPONSE IN OPPOSITION

1. Not disputed, but with the caveat that at least some City employees have denied that any such policy exists, including the head of Code Enforcement, Kurt Keating, and City Manager, Jack Lam. If the jury accepts their testimony, then Linda Daniels may still be individually liable for having directed her employee, Donna Vega, to contact General Outdoor Advertising regarding complaints about FFRF's billboard.

SUPPORTING EVIDENCE

1. Deposition of Kurt Keating, p. 19:17-21; Deposition of Jack Lam, p. 24:11-7 and p. 25:5-10.

2. Tim Lynch requested that the City of Rancho Cucamonga notify him of complaints relating to General Outdoor Advertising billboards, and routinely does so in other cities and counties.

2. Declaration of Tim Lynch, ¶ 2; Deposition of Tim Lynch, pp. 23:6-8, 24:9-11. (True and correct copies of these pages are attached collectively to the Motion as Exhibit A.)

1 **PLAINTIFF'S RESPONSE IN**
2 **OPPOSITION**

SUPPORTING EVIDENCE

3 2. Disputed. No employee of the City
4 has acknowledged any such request, and
5 in fact, the City Manager and the City
6 Attorney deny even knowing Tim
7 Lynch. The jury also could disbelieve
8 Lynch's self-serving claim by drawing
9 reasonable inferences from substantial
10 other evidence. General Outdoor
11 Advertising, for instance, must obtain
12 City approvals for lucrative business
13 projects and admittedly has an incentive
14 to please the City. The City's policy of
15 reporting complaints to local businesses,
16 moreover, is predicated on the
17 expectation that businesses will engage
18 in corrective behavior in order to
19 maintain good relations with the City.
20 Finally, the jury could also conclude that
21 any such request by Mr. Lynch related to
22 matters within the City's jurisdiction to
23 regulate, such as location, size, lighting,
24 etc. Matters of billboard content,
25 however, are admittedly beyond the
26 authority of the City to directly regulate,
27 which is precisely why the City
28 contacted General Outdoor Advertising
through personnel in active negotiation
with the Company on pending lucrative
business matters. In any event, no City
employee has ever testified that the
City's complaint to General Outdoor
Advertising was based upon a request
from the Company, including Linda
Daniels, Donna Vega, Jack Lam, or
Attorney Jim Markman.

2. Dep. of Jack Lam, p. 58:3-10; Dep.
of James Markman, p. 53:7-8; p. 9:17-24
and p. 10:4-6; p. 48:21 through p. 49:7;
p. 52:6-10; p. 53:1-6; p. 61:6-8; p.
12:12-15; and p. 18:8-17; Dep. of Kurt
Keating, p. 21:17 through p. 23:11; Dep.
of Billy Wynn, p. 33:22 through p. 34:7;
Dep. of Tim Lynch, p. 27:7-10; p. 33:4-
15; Dep. of Donna Vega, p. 5:25
through p. 10:10; p. 14:3 through 16:4;
p. 21:4-25; p. 29:6 through p. 32:7; p.
42:7 through p. 43:10; p. 80:5-10; p.
81:20-23; Dep. of Linda Daniels, p.
12:2-16; p. 13:1-4; p. 15:24 through p.
16:3; p. 24:19-22; p. 48:3-15; p. 63:4-7;
p. 70:14-18; p. 83:14-22; p. 93:18
through p. 94:10; and p. 138:8-12;
Declaration of Richard Bolton, ¶ 12.

1 3. Donna Vega was the only City of
2 Rancho Cucamonga employee that
3 Billy Wynn spoke with regarding
4 citizen complaints about the "Imagine
5 No Religion" billboard.

6 **PLAINTIFF'S RESPONSE IN
7 OPPOSITION**

8 3. Not disputed.

9 4. Neither Donna Vega nor anyone else
10 employed by the City of Rancho
11 Cucamonga expressed objection to the
12 "Imagine No Religion" billboard to
13 Billy Wynn.

14 **PLAINTIFF'S RESPONSE IN
15 OPPOSITION**

16 4. Disputed. The City's policy of
17 contacting local businesses about
18 complaints is intended and expected to
19 provoke a response by the company.
20 According to Donna Vega, in her
21 experience, companies that receive such
22 complaints typically respond to the
23 complaint and report back to the City
24 regarding any resolution. The City
25 Attorney for Rancho Cucamonga,
26 moreover, considers the reporting of
27 such complaints as a proactive means of
28 communicating to businesses that they
are perceived to be acting "badly." The
City also has admitted that it approached
General Outdoor Advertising and "asked
if there was a way to get it [the
billboard] removed." Linda Daniels

3. Declaration of Billy Wynn, ¶ 5;
Deposition of Billy Wynn, pp. 36:15-
19, 37:1-4. (True and correct copies
of these pages are attached
collectively to the Motion as Exhibit
B.)

SUPPORTING EVIDENCE

4. Declaration of Billy Wynn, ¶ 5;
Deposition of Billy Wynn, p. 23:6-10.
(True and correct copies of these
pages are attached collectively to the
Motion as Exhibit B.)

SUPPORTING EVIDENCE

4. Declaration of Wendy Leung, ¶ 5;
Dep. of Donna Vega, p. 5:25 through p.
6:6; p. 6:21 through p. 7:16; p.7:24
through p. 10:8; p. 14:3 through p. 15:7;
p. 21:4-25; p. 29:13 through p. 30:7; p.
31:3-11; p. 32:1-7; Dep. of Linda
Daniels, p. 12:4-16; p. 13:1-4; p. 93:21
through p. 94:10; Dep. of James
Markman, p. 9:17 through p. 10:6; p.
48:21 through p. 49:4; p. 52:6-10; p.
53:1-6; p. 61:6-9; p. 66:15 through p.
67:6.

1 described this purpose in statements that
2 she made to a newspaper reporter,
3 Wendy Leung. According to Donna
4 Vega, moreover, General Outdoor
5 Advertising immediately expressed its
6 intent to get back to her regarding the
7 reported complaint about the FFRF
8 billboard, and Donna Vega herself
9 reported back to her supervisor, Linda
10 Daniels, thereby suggesting that her
11 contact with General Outdoor
12 Advertising was more than just
13 informational. Donna Vega's
14 communication to General Outdoor
15 Advertising included notification that
16 the FFRF billboard was considered
17 substantively offensive.

18
19
20
21
22
23
24
25
26
27
28
**5. General Outdoor Advertising
directly received complaints about the
"Imagine No Religion" billboard.**

**5. Declaration of Billy Wynn, ¶ 3;
Deposition of Billy Wynn, p. 8:12-20.
(True and correct copies of these
pages are attached collectively to the
Motion as Exhibit B.)**

**PLAINTIFF'S RESPONSE IN
OPPOSITION**

SUPPORTING EVIDENCE

**5. Not disputed, except as to any
inference that General Outdoor
Advertising acted in response to such
direct complaints. In fact, stories about
the FFRF billboard had run on local
media, including TV, and Tim Lynch
had fielded comments from his own
softball team well before the City
contacted the Company. Significantly,
however, the Company had not planned
to take any action regarding the FFRF**

**5. Dep. of Donna Vega, p. 7:7-12; p.
11:13 through p. 13:15; p. 29:19 through
p. 30:1; Dep. of Billy Wynn, p. 8:4-20;
p. 31:19 through p. 32:19; Dep. of Tim
Lynch, p. 7:2-5; p. 9:4-20; p. 8:4-10;
Dep. of Linda Daniels, p. 15:12-19; p.
48:7-15; p. 93:17 through p. 94:10.**

1 billboard. After being contacted by the
2 City late on the afternoon of November
3 19, however, the Company reported to
4 the City first thing the next morning on
5 Thursday, November 20, that the FFRF
6 billboard was being removed from
7 display. For its own part, the City
8 concedes that General Outdoor
9 Advertising knew about the controversy
10 regarding the FFRF billboard, but Linda
11 Daniels felt such prior information did
12 not substitute for directly reporting that
13 the City received such complaints.

14 6. Tim Lynch was concerned about
15 negative controversy related to the
16 "Imagine No Religion" billboard.

6. Deposition of Tim Lynch, p. 13:24
through 14:2. (True and correct
copies of these pages are attached
collectively to the Motion as Exhibit
A.)

17 **PLAINTIFF'S RESPONSE IN
18 OPPOSITION**

SUPPORTING EVIDENCE

19 6. Disputed. A reasonable jury could
20 draw the inference that the City's
21 concern about the billboard was decisive
22 in the Company's decision, rather than
23 the general public controversy. General
24 Outdoor Advertising apparently knew
25 about the controversial nature of the
26 FFRF billboard prior to being contacted
27 by the City, but the Company had no
28 plan to take any action. The Company,
however, immediately removed FFRF's
billboard from display after being
contacted on behalf of the City by an
agency employee selected precisely

6. Dep. of Billy Wynn, p. 8:4-20; p.
31:19 through p. 32:19; p. 33:22 through
p. 34:8; p. 38:3-8; Dep. of Tim Lynch, p.
9:9-20; p. 8:4-10; p. 9:9-13; p. 24:2
through p. 27:10; Dep. of Donna Vega,
p. 6:21 through p. 7:16; p. 7:24 through
p. 8:25; p. 21:4-25; Dep. of Linda
Daniels, p. 45:14-20; 48:3-15; p. 62:13
through 63:7; 93:17 through p. 94:10;
Dep. of James Markman, p. 9:17
through 10:6; p. 48:21 through p. 49:4;
p. 52:6-10; p. 53:1-6; p. 61:6-9; p. 66:15
through 67:6; Declaration of Wendy
Leung.

1 because she was in negotiations with
2 the Company regarding a lucrative
3 business matter. Good relations with the
4 City, moreover, is important to billboard
5 operators like General Outdoor
6 Advertising. The inference that the
7 City's complaint was decisive is
8 reinforced by the City's own expectation
9 that businesses will respond to contacts
10 by the City. The Company, however, is
11 in the business of posting billboard
12 communications for hire, and the
13 Company could evaluate the FFRF
14 billboard even before the display, but
15 the Company typically does not evaluate
16 content. Finally, the inference is
17 unmistakable that the Company's
18 pending negotiations with the City over
19 a potentially lucrative project was the
20 moving force in the Company's decision,
21 which the City expected to be the case.
22 That is why City Attorney Jim Markman
23 targeted Linda Daniels' agency as the
24 best choice to contact General Outdoor
25 Advertising.

21 7. Tim Lynch decided to take down the
22 "Imagine No Religion" billboard for
23 economic reasons.

7. Declaration of Tim Lynch, ¶¶ 6, 8;
Deposition of Tim Lynch, pp. 11:10-
16, 13:18-21, 32:9-24. (True and
correct copies of these pages are
attached collectively to the Motion as
Exhibit A.)

26 **PLAINTIFF'S RESPONSE IN**
27 **OPPOSITION**

SUPPORTING EVIDENCE

27 7. Disputed. A reasonable jury could
28 conclude that General Outdoor

7. Dep. of Billy Wynn, p. 8:4-20; p.
31:19 through p. 32:19; p. 33:22 through

1 Advertising decided to remove the
2 FFRF billboard because of the City's
3 contact. The Company knew about the
4 controversial nature of the FFRF
5 billboard before being advised by the
6 City that the billboard was perceived to
7 be offensive. The Company, however,
8 took no action, and had no plan to take
9 action, until Donna Vega contacted the
10 Company. The Company's economic
11 considerations, therefore, more clearly
12 related to the desire to satisfy the City,
13 with whom the Company was in active
14 negotiations regarding a lucrative
15 business project. City Attorney Jim
16 Markman targeted the person to
17 approach the City on the basis that the
18 Agency was involved in the negotiations
19 with the Company. The Company,
20 therefore, may very well have acted for
21 perceived economic self-interest, but not
22 because of any public controversy, but
23 because of the implications of its
24 negotiations with the City. General
25 Outdoor Advertising candidly admits
26 that fostering good relations with the
27 City is a desirable business
28 consideration, and the Company
worried that its approval from the City
could be affected.

8. Tim Lynch decided that the contract
value of the "Imagine No Religion"
billboard was not high enough to justify
dealing with the controversy related to
the sign.

p. 34:8; p. 38:3-8; Dep. of Tim Lynch, p.
9:9-20; p. 8:4-10; p. 9:9-13; p. 24:2
through p. 27:10; Dep. of Donna Vega,
p. 6:21 through p. 7:16; p. 7:24 through
p. 8:25; p. 21:4-25; Dep. of Linda
Daniels, p. 45:14-20; 48:3-15; p. 62:13
through 63:7; 93:17 through p. 94:10;
Dep. of James Markman, p. 9:17
through 10:6; p. 48:21 through p. 49:4;
p. 52:6-10; p. 53:1-6; p. 61:6-9; p. 66:15
through 67:6; Declaration of Wendy
Leung.

8. Declaration of Tim Lynch, ¶ 6;
Deposition of Tim Lynch, pp. 9:22
through 10:1, 32:9-24. (True and
correct copies of these pages are
attached collectively to the Motion as
Exhibit A.)

1 knew it could not do.

2
3 **9.** Tim Lynch was concerned that
4 ongoing controversy about the
5 "Imagine No Religion" billboard could
6 taint the sign location and make it more
7 difficult to lease in the future.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
**PLAINTIFF'S RESPONSE IN
OPPOSITION**

9. Disputed. A reasonable jury could conclude that the ongoing controversy regarding the FFRF billboard was not critical to General Outdoor Advertising, as the Company took no action and planned no action, until being contacted by the City -- despite knowledge of the controversy. The City, for its part, anticipated that the Company would construe the City's approach as criticism of the billboard and that the Company would thereby respond and report back. In fact, the Company immediately assured Donna Vega that it would get back to her after she contacted the Company. Maintaining good relations with the City is always an important business consideration for the Company. This was particularly true in November, 2008, when the Company was in negotiations with the City regarding a lucrative business project. City Attorney Jim Markman, in fact, considered the Agency in negotiations with the Company to be precisely the right choice to contact the Company and Donna Vega, not so subtly, referenced

9. Declaration of Tim Lynch, ¶ 7.

SUPPORTING EVIDENCE

9. Dep. of Billy Wynn, p. 8:4-20; p. 31:19 through p. 32:19; p. 33:22 through p. 34:8; p. 38:3-8; Dep. of Tim Lynch, p. 9:9-20; p. 8:4-10; p. 9:9-13; p. 24:2 through p. 27:10; Dep. of Donna Vega, p. 6:21 through p. 7:16; p. 7:24 through p. 8:25; p. 21:4-25; Vega Dep. Exh. 2; Dep. of Linda Daniels, p. 45:14-20; 48:3-15; p. 62:13 through 63:7; 93:17 through p. 94:10; Dep. of James Markman, p. 9:17 through 10:6; p. 48:21 through p. 49:4; p. 52:6-10; p. 53:1-6; p. 61:6-9; p. 66:15 through 67:6; Declaration of Wendy Leung.

1 the business project in her own e-mail to
2 the Company regarding the billboard
3 complaint.

4 10. Tim Lynch might have considered
5 leaving the "Imagine No Religion"
6 billboard up if the economics of the
7 contract justified it.

10. Declaration of Tim Lynch, ¶ 8;
Deposition of Tim Lynch, p. 32:9-24.
(True and correct copies of these
pages are attached collectively to the
Motion as Exhibit A.)

8
9 **PLAINTIFF'S RESPONSE IN
10 OPPOSITION**

11 **10.** Disputed. A reasonable jury could
12 conclude that Mr. Lynch's primary
13 consideration was satisfying the City. In
14 fact, General Outdoor Advertising did
15 not plan to take the FFRF billboard
16 down, despite controversy, until after
17 being contacted by the City. General
18 Outdoor Advertising also admits that
19 good relations with the City is always an
20 important business consideration. The
21 Company, moreover, was in active
22 negotiations relating to a lucrative
23 business project at the time of the City's
24 complaint. The persuasive influence of
25 the City's approval process in that matter
26 can be inferred from the fact that the
27 City deliberately approached the
28 Company through the Agency personnel
involved in direct negotiations.
According to Jim Markman, the City
Attorney, such an approach is deemed
most appropriate for resolving issues
without formal action. Being able to
influence the Company without formal
action, but with subtle economic

SUPPORTING EVIDENCE

10. Dep. of Billy Wynn, p. 8:4-20; p.
31:19 through p. 32:19; p. 33:22 through
p. 34:8; p. 38:3-8; Dep. of Tim Lynch, p.
9:9-20; p. 8:4-10; p. 9:9-13; p. 24:2
through p. 27:10; Dep. of Donna Vega,
p. 6:21 through p. 7:16; p. 7:24 through
p. 8:25; p. 21:4-25; Dep. of Linda
Daniels, p. 45:14-20; 48:3-15; p. 62:13
through 63:7; 93:17 through p. 94:10;
Dep. of James Markman, p. 9:17
through 10:6; p. 12:12-15; p. 48:21
through p. 49:4; p. 52:6-10; p. 53:1-6; p.
61:6-9; p. 66:15 through 67:6;
Declaration of Wendy Leung.

1 coercion, was critical to the City in this
2 case, moreover, because the City
3 admittedly cannot directly regulate
4 billboard content. Attorney Markman
5 apparently actually discussed First
6 Amendment considerations with Linda
7 Daniels before contacting the Company,
8 although the City claims privilege as to
9 his actual communications. In any
10 event, a reasonable inference from the
11 facts supports the conclusion that Mr.
12 Lynch would not have considered
13 leaving the FFRF billboard up, in light
14 of the city's complaint, given the
15 "economics" of the lucrative project
16 being negotiated with the City. Mr.
17 Lynch knew the importance of pleasing
18 the City - - and the City anticipated just
19 such a reaction.

16 **II. Pursuant to Local Rule 7-9, Plaintiff submits the following**
17 **additional proposed material facts necessary to be litigated.**

18 **PLAINTIFFS' ADDITIONAL**
19 **ALLEGED MATERIAL FACTS**

SUPPORTING EVIDENCE

20 1. The City of Rancho Cucamonga
21 applies its policy of contacting
22 businesses about complaints, even to
23 complaints about the substantive content
24 of speech on public billboards operated
25 by companies doing business in the
26 City.

1. Vega Dep., p. 9:4-22.

27
28 2. The City knows that it cannot directly

2. Markman Dep., p. 12:12-15 and p.

1 regulate or control the content of 67:1-6.
2 billboard speech, but the City
3 nevertheless follows a policy of
4 contacting billboard operators regarding
5 complaints about the content of
6 unpopular messages.

7
8 3. The City contacts billboard operators 3. Daniels Dep., p. 93:17 through 94:10.
9 about complaints regarding unpopular
10 billboard content even if the operator
11 presumably already knows about the
12 complaints.

13
14 4. According to Linda Daniels, 4. Daniels Dep., p. 94:6-10.
15 Development Director, it is important to
16 let the company know that "the City"
17 has received complaints.

18
19 5. The City knew from experience that a 5. Vega Dep., p. 22: 4-25.
20 business probably will look into a
21 complaint received from the City,
22 respond to the complaint, and report
back to the City.

23
24 6. Complaints conveyed to billboard 6. Vega Dep., p. 29:19 through p. 30:1
25 operators have resulted in responsive
and p. 75:17 through 80:17.
action by the operators.

26
27 7. The defendant, Linda Daniels, 7. Vega Dep., p. 14:7-11.
28 instructed her employee, Donna Vega, to
contact General Outdoor Advertising

1 regarding complaints about a billboard
2 being displayed in the City.

3 8. Ms. Daniels allegedly knew that the 8. Vega Dep., p. 10:14-16.
4 City had received complaints about the
5 billboard in question, which the
6 Plaintiff, Freedom From Religion
7 Foundation, contracted to display.

8 9. Ms. Daniels also knew that the City 9. Daniels Dep., p. 24:1-3.
9 Manager's Office had received telephone
10 complaints about the billboard, after
11 local news publicity, and the callers
12 were referred to the City's Code
13 Enforcement Office.

14 10. The content of public billboards is 10. Daniels Dep., p. 24:4-10.
15 not a matter of Code Enforcement,
16 because the City cannot directly control
17 or regulate the content of billboard
18 speech.

19 11. The FFRF billboard included a 11. Vega Dep., p. 7:3-6.
20 stained glass motif with the phrase
21 "Imagine No Religion."

22 12. The City understood that the 12. Vega Dep., p. 13:5-6.
23 billboard was intended to cause people
24 to contemplate the possibility of a world
25 without religion.

26 13. The complaints that the City 13. Vega Dep., p. 9:16 through p. 10:8;
27 received about the "Imagine No
28 Religion" billboard voiced opposition to
Daniels Dep., p. 13:1-4.
the billboard message, expressed
offense, and wanted the billboard

1 removed.

2

3 14. Donna Vega promptly contacted
4 General Outdoor Advertising upon Ms.
5 Daniels' request; Ms. Vega contacted
6 Billy Wynn at General Outdoor
7 Advertising in order "to inform him that
8 we had received complaints about the
9 billboard; that the City had received
10 complaints."

14. Vega Dep., p. 10:9-11.

9 15. Ms. Daniels had advised Ms. Vega
10 that the City was receiving complaints
11 about the billboard from residents who
12 were offended by its content, and she
13 asked Ms. Vega to "call General
14 Outdoor to let them know."

15. Daniels Dep., p. 12:2-16.

14 16. When Ms. Vega contacted Mr.
15 Wynn, she "called to let him know that
16 we had received complaints from
17 residents who were offended by the
18 billboard." Ms. Vega further stated that
19 "the City had been receiving complaints
20 by residents who were offended by the
21 billboard."

16. Vega Dep., p. 30:5-7.

21 17. Ms. Vega had no other purpose for
22 her call to General Outdoor Advertising.
23 She simply called to say that the City
24 received "a lot" of calls objecting to the
25 message of the FFRF billboard.

17. Wynn Dep., p. 11:17-19.

25 18. Linda Daniels selected Donna Vega
26 to contact General Outdoor because Ms.
27 Vega was working at that time with the
28 Company.

18. Daniels Dep., p. 70:14-18.

- 1 19. Ms. Vega explicitly referenced the 19. Vega Dep., Ex. 1.
2 business project in an email to General
3 Outdoor in which she also referenced
4 complaints about the billboard.
- 5 20. When contacting General Outdoor 20. Vega Dep., p. 30:8 through p. 31:1.
6 Advertising, Ms. Vega did not "remind"
7 General Outdoor Advertising that the
8 content of the FFRF billboard was
9 something over which the City had no
10 regulatory control; nor did she advise
11 General Outdoor Advertising that any
12 response to the complaints was strictly a
13 business decision between General
14 Outdoor Advertising and their client.
- 15 21. While directing Ms. Vega to contact 21. Daniels Dep., p. 71:24 through p.
16 General Outdoor Advertising, Linda 72:25.
17 Daniels also did not tell her to advise
18 General Outdoor Advertising that any
19 response to complaints was strictly a
20 business decision to be made by General
21 Outdoor Advertising.
- 22 22. Contacting General Outdoor 22. Vega Dep., p. 75:17 through p.
23 Advertising through an employee 80:17.
24 working on a lucrative business project
25 is consistent with the City's past
26 practice. For example, a couple months
27 before the situation arose involving the
28 "Imagine No Religion" billboard, the
City contacted another billboard
operator regarding complaints about its
billboard.
23. The other billboard also involved 23. Vega Dep., p. 75:21-23.
content which was considered offensive.

- 1 24. The City contacted Lamar Advertising through an employee,
2 Flavio Nunez, who was also working on
3 a business project with Lamar at the
4 time of reporting the complaint. As in
5 this case, Lamar responded to the City's
6 complaint, including by moving the
7 billboard.
- 8 25. Linda Daniels has acknowledged that the reason for contacting General
9 Outdoor Advertising was to "ask if there
10 was a way to get it [the billboard]
11 removed. "
- 12 26. Ms. Daniels expressly told a reporter for the Inland Valley Daily
13 Bulletin, Wendy Leung, that the City
14 contacted General Outdoor Advertising
15 to ask "if there was a way to get it [the
16 billboard] removed. "
- 17 27. General Outdoor Advertising responded almost immediately to the
18 contact from the City by refusing to
19 further display the FFRF billboard.
- 20 28. General Outdoor Advertising received the City's complaint after 4:00
21 p.m. on Wednesday, November 19, and
22 then called the City back early on the
23 morning of November 20, to report that
24 it was removing the "Imagine No
25 Religion" billboard.
- 26 29. General Outdoor had a potentially lucrative project pending before the City
- 27 24. Vega Dep., p. 80:16
- 28 25. Leung Declaration, ¶ 5.
26. Leung Declaration, ¶ 5.
27. Vega Dep., p. 7:7-16.
28. Vega Dep., p. 7:1-25.
29. Wynn Dep., p. 34:3-8.

- 1 when contacted .
- 2
- 3 30. Maintaining good relations with the City is desirable and advantageous for billboard operators. 30. Wynn Dep., p. 33:22 through p. 34-2; Lynch Dep., p. 27:7-10.
- 4
- 5
- 6 31. Prior to contact by the City, General Outdoor Advertising had not planned to take down the FFRF billboard. 31. Wynn Dep., p. 31:19 through p. 32:5.
- 7
- 8
- 9 32. Although General Outdoor claims to have known about complaints prior to contact from the City, it only decided to take the billboard down immediately after receiving the City's complaint. 32. Wynn Dep., p. 8:12-20.
- 10
- 11
- 12
- 13 33. Mr. Wynn did not know what could be done about the FFRF billboard when the City called , so he asked the owner, Tim Lynch. 33. Wynn Dep., p. 7:11 through p. 8:8.
- 14
- 15
- 16
- 17 34. Before Mr. Wynn could even quantify the number of complaints, Mr. Lynch told Wynn to yank the billboard. 34. Wynn Dep., p. 12:2 through p. 14:4, and p. 19:6-18.
- 18
- 19
- 20 35. General Outdoor Advertising assured the City of a response, as soon as it got the City's complaint, which was Company standard practice. 35. Vega Dep., p. 29:19 through p. 30:1; Wynn Dep., p. 21:1-6; Lynch Dep., p. 29:12-21.
- 21
- 22
- 23
- 24 36. General Outdoor Advertising did report back to the City, and Donna Vega in turn reported back to Linda Daniels regarding everything she learned from General Outdoor Advertising about the "Imagine No Religion" billboard. 36. Vega Dep., p. 31:3 through p. 32:7.
- 25
- 26
- 27
- 28

- 1 37. The City immediately began "telling 37. Vega Dep., Exh. 2.
2 residents that the sign will be down by
3 the end of the day, so that seems to have
4 put some of them at ease."
- 5 38. Linda Daniels claims that long time 38. Daniels Dep., p. 48:3-15.
6 City Attorney, Jim Markman, actually
7 called her into his office to suggest that
8 her department contact General Outdoor
9 Advertising about the "Imagine No
Religion" billboard.
- 10 39. Despite the City's claimed policy of 39. Daniels Dep., p. 52:1-18
11 conveying all complaints to businesses
12 as a matter of course, Ms. Daniels was
13 unaware of any prior instance in which
14 Attorney Markman, from the Richards,
15 Watson, and Gershon Law Firm, had
16 asked her to report a complaint to a local
business.
- 17 40. Attorney Markman claims to have 40. Markman Dep., p. 7:6-14.
18 become aware of the FFRF billboard
19 from the Head of Code Enforcement,
20 Kurt Keating.
- 21 41. Attorney Markman says that 41. Markman Dep., p. 7:6-14.
22 Keating showed him a picture of the
23 billboard and noted the Beatles'
"Imagine No Religion" phrase.
- 24 42. Mr. Keating, however, has testified 42. Keating Dep., p. 9:11 through p.
25 he did not even know that the phrase 10:18, p. 20:12-21; p. 26:4-14; p. 34:16-
26 was from the Beatles and he had no 23.
27 picture of the billboard to show.
- 28 43. Mr. Keating unequivocally denies 43. Keating Dep., p. 34:16-23.

1 knowing that Attorney Markman was a
2 Beatles fan, or that "Imagine No
3 Religion" was a phrase from a Beatles
4 song, and Keating was unconcerned
5 about the billboard.

6 44. Attorney Markman acknowledges
7 that the reason to notify businesses
8 about complaints is to seek voluntary
9 solutions. Attorney Markman stated just
10 this, as follows:

11 "When the City gets complaints about
12 any activity, business activity in the city,
13 normally speaking, rather than enforcing
14 or getting involved in some kind of
15 formal adversarial process with them,
16 we always let them know that people are
17 complaining in the hope that the
18 complaints will cease, or they can react
19 and call the people or complain or deal
20 with it in some way . . . "

21 "But the City is -- tries to pass along
22 information that might lead to solutions
23 rather than having to take some kind of
24 formal action."

25 45. According to Attorney Markman,
26 "the City tries to be proactive and to
27 impart information [about complaints],
28 again, with the hope that it will be
resolved without the City having to do
anything formal."

46. According to Attorney Markman, the
appropriate person to make contact with
a business about complaints is a person
who has "a relationship with somebody

44. Markman Dep., p. 9:17 through p.
10:6.

45. Markman Dep., p. 49:1-4.

46. Markman Dep., p. 20:17-19.

1 at the company that -- where he's
2 working with them at the time.

3 47. Attorney Markman believes he 47. Markman Dep., p. 21:12-17.
4 "picked the right person" in Linda
5 Daniels to contact General Outdoor
6 Advertising "because we are negotiating
7 contracts with these people."

8 48. Attorney Markman further 48. Markman Dep., p. 52:6-10.
9 explained the rationale for contacting
10 businesses about complaints when there
11 is a relationship with the City:
12 "The business relationship is a reason --
13 the fact that we're in a process of
14 recommending approval of a project and
15 the applicant is perceived to be acting
16 badly is a reason to tell him he's
17 perceived to be acting badly. "

16 49. The City Attorney states that 49. Markman Dep., p. 53:1-13.
17 conveying information about complaints
18 may be useful to completing a business
19 transaction with the City:
20 "If you are doing a business transaction,
21 then there are people you're dealing with
22 who you can say 'here is a circumstance
23 that you need to know about because we
24 are trying to process a business
25 transaction.' . . .
26 "You know, I don't know who they are.
27 I've never talked to an official at the
28 advertising company. But -- or even
their lawyers. I just review drafts and
talk with the staff and give them my
input. But Linda Daniels, to me, was in
a business relationship transaction with

1 that particular company, so that's why I
2 contacted her."

3
4 50. In choosing Linda Daniels to
5 contact General Outdoor Advertising,
6 because of her department's relationship
7 with the Company, Attorney Markman
8 was well aware that the City could not
9 directly regulate the allegedly offensive
10 billboard content. "We all know there's
11 no such thing as code enforcement on --
12 on billboard content. I mean, that is just
13 not something -- we're not allowed to do
14 it so that wasn't even the point."

50. Markman Dep., p. 12:12-15.

12 51. The City considers the volume of
13 complaints received to be significant in
14 its reporting to businesses.

51. Daniels Dep., p. 75:6-21.

15 52. According to Linda Daniels, the
16 volume of complaints is important
17 information.

52. Daniels Dep., p. 75:18-21.

18 53. Toward the end of quantifying
19 opposition to FFRF's billboard, the City
20 eventually undertook to tally opposition
21 to FFRF's billboard.

53. Daniels Dep., p. 75:22 through p.
76:5.

22 54. According to the City's Enforcement
23 Head, Kurt Keating, contacting billboard
24 companies about the content of billboard
25 speech is unprecedented in his
26 experience, which experience includes
27 working for other cities in addition to
28 the City of Rancho Cucamonga.

54. Keating Dep., p. 21:5 through p.
23:11.

1 55. As a result of the City's policy of
2 contacting billboard operators regarding
3 complaints about the content of public
4 billboards, FFRF is reluctant to display
5 another billboard in Rancho
6 Cucamonga.

7 DATED: August 31, 2009.

55. Declaration of Annie Laurie Gaylor,
¶ 9.

Respectfully submitted,

10 /s/ Richard L. Bolton
11 Richard L. Bolton, WI BN: 1012552
12 BOARDMAN LAW FIRM
13 1 S. Pinckney Street, 4th Floor
14 Madison, Wisconsin 53703
15 Phone: (608) 257-9521
16 Fax: (608) 283-1709
17 rbolton@boardmanlawfirm.com

18 Robert A. Seeman SBN: 52790
19 658 Myrtle Street
20 Glendale, CA 91203
21 Phone: 818-384-8059
22 Fax: 818-241-6907
23 rseeman@pacbell.net

24 Attorneys for Plaintiff
25 *Freedom From Religion Foundation*
26
27
28